IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.4350 of 1991

In the matter of an application under Articles 226 and 227 of the Constitution of India.
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1. RAMGATI YADAV
2. RAM SWARUP YADAV, BOTH SONS OF LATE DUKHI YADAV, R/O VILLAGE-SAHPUR TOLE PIPARDIAH P.S. AURANGABAD, DISTT- AURANGABAD--PETITIONERS

Versus

1. THE STATE OF BIHAR
2. SURVEY SUPERINTENDETNT,AURANGABAD,HEADQUARTER-GAYA
3. ASSISTANT SURVEY SUPERINTENDENT,AURANGABAD
4. BAJRANGI YADAV S/O LATE DUKHI YADAV,R/O VILLAGE SAHPUR TOLE PIPARDHIR P.S. AURANGAABD, DISTRICT-AURANGABAD---------- RESPONDENTS

FOR THE PETITIONERS; M/S. RAM CHANDRA SINGH
M.M. PD. NO.2
NAND LAL SINGH,ADVOCATES
FOR THE RESPONDENTS; NONE

P R E S E N T
HON'BLE MR. JUSITCE AJAY KUMAR TRIPATHI

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A.K.Tripathi,J Petitioners are seeking quashing of the impugned order dated 26.10.1990 (annexure-1) which has been passed under purported exercise of power under section 9 of the Bihar & Orissa Municipal Survey Act by the competent authority as well the order passed in appeal dated 19. 4. 1991 by the survey Superintendent contained in annexure-4 who has dismissed the appeal of the petitioners filed against annexure-1.

Notice had gone to respondent no. 4 but there is no representation on behalf of respondent no.4 till date despite a valid notice having been served in this regard as would be reflected from perusal of the earlier part of the record.

Respondent no.4 taking recourse to section 9 of the Municipal Survey Act filed a petition before the Assistant Survey

Superintendent claiming that he is entitled to 1/3rd share in the property of his father and the same should be recorded in his name in terms of his rightful claim and title. His contention was that a kind of fraud was played on him while getting his name entered in the Municipal record at the appropriate time. He is supposed to be offspring of the first wife and the petitioners are offspring of the second wife of their father. The Assistant Survey Superintendent taking cognizance of the grievance of respondent no. 4 passed the impugned order contained in annexure-1 ordering necessary correction in Khata No. 554 which was carved out from CS Khata No. 110. Petitioners being aggrieved by the said order filed an appeal before the Superintendent of Survey who dismissed the appeal, namely, Appeal No. 91 of 1990 upholding the decision dated 26.10.1990. It is in this background the present writ application challenging both the orders has come to be filed.

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Learned counsel appearing on behalf of petitioners submits that both the impugned orders are illegal and arbitrary which are beyond the competence and jurisdiction of the authority. The power exercised under section 9 is misplaced exercise of power because the ambit of section 9 does not empower the authority to decide right, title and interest between the parties but it can only use to bring about correction in the municipal records for any misdescription or mistake which might have crept in after due survey and maintenance of records in this regard.

Submission of learned counsel is that the

respondent no. 4 chose to file a partition suit, namely, Partition Suit No. 64 of 1986 and the judgment and decree in this regard dated 28.11.1986 come to be rendered by the court of Sub-Judge, Aurangabad. The above fact is borne out and verifiable from annexure-2 which has been brought on record.

Since the share of the parties as well as the various lands and their allocation came to be settled by virtue of the said decision, there was no occasion for the survey authority more so while exercising power under Bihar & Orissa Municipal Survey Act, 1920 to make any correction or allocation of share in favour of respondent no.4 to that extent. Both the Assistant Survey Superintendent as well as the Survey Superintendent have exceeded the jurisdiction by passing the impugned orders.

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As already recorded above since the respondent no.4 has not chosen to appear and assist the Court, therefore the contention and submission made on behalf of the petitioners will have to be accepted in so far as the basic facts are concerned. Even law on this issue seems to be quite clear that it is not open for the survey authority to decide the question of title and right between the parties based on certain surmises, conjecture or assertions made in this regard before them. The power under section 9 is to be exercised only with the object of certain correction in the record which might have crept in after draft publication of the record and the entry pursuant to a survey carried out by the Municipal authority as per the Act. The right, title and claim raised by

respondent no. 4 falls within the realm of the civil court and if an exercise in this regard have already been carried out by the competent civil court at the instance of respondent no. 4 then the Court has no hesitation in recording that the impugned orders contained in annexure-1 and annexure-4 are orders which deserve interference. In this regard the proposition of law has been laid down in the case of Kanhaiya Lal Sah & Ors vrs. The State of Bihar & ors. reported in 1993 (3) PLJR 318.

This writ application stands allowed. Annexure- 1 as well as annexure-4 stands quashed. There will however be no order as to cost.

(Ajay Kumar Tripathi, J.)

Patna High Court, Patna
Dated the 10th November, 2008
NAFR,RPS/Sr.Secy.

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